IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 4265 of 2005()

AGAINST THE ORDER IN CRMP 3412/05 IN
CC.115/2001 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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PETITIONER: DEFACTO COMPLAINANTS

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1. KODAPPURATHUKUDY ARAVINDAKSHAN,
S/O.NARAYANAN, OKKAL P.O.,
ANTOPURAM, PERUMBAVOOR.

2. ANOOP, S/O.ARAVINDAKSHAN, OKKAL P.O.,
ANTOPURAM, PERUMBAVOOR.

BY ADV. SRI.G.GOPAKUMAR (THEVARA)

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
S.H.O., PERUMBAVOOR POLICE STATION.

2. KOONATHAN BENNY, S/O.PAILY,
OKKAL P.O., PERUMBAVOOR.

3. SHAJU, S/O.PURAKKADAN DEVASSY,
EAST OKKAL, OKKAL P.O.

4. THAMPI, S/O.MOOLEKKUDIVEETIL PALLI,
EAST OKKAL, OKKAL P.O., PERUMBAVOOR.

R1 BY PUBLIC PROSECUTOR SMT. LATHA
SRI.K.SUNIL KUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 4265 of 2005

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Dated this the 17th day of January, 2007

O R D E R

The second petitioner is the injured in a prosecution, inter alia, under Section 338 I.P.C. The first petitioner is the father of the second petitioner. Cognizance has been taken by the learned Magistrate on the basis of the final report submitted by the police.

2. Trial is in progress. In the course of the trial, the petitioners have come to know that a proper investigation has not been conducted by the police into the nature of the hurt suffered by the second petitioner. He has suffered grievous hurt, which satisfies the definition of grievous hurt under Section 320 I.P.C. But unfortunately necessary evidence has not been collected by the Investigating Officer. The petitioners now realise that there is this serious flaw in the investigation. They moved the learned Magistrate with an application under Section 173(8) Cr.P.C. They prayed that further investigation may be directed to be conducted so that in the interests of justice the true facts - that permanent privation of vision has been suffered by the second petitioner - can be ascertained and

relevant materials placed before the learned Magistrate. The learned Magistrate took up the said petition for consideration and by the impugned order dismissed the same. The court appears to have entertained the impression - in paragraph 4 of the order - that "according to me the petitioners have no right to file this application before this Court."

3. The learned counsel for the petitioners submits that the approach made by the learned Magistrate is incorrect. It was wrong for the learned Magistrate to assume that he has no jurisdictional competence to entertain such an application filed by the petitioners for further investigation under Section 173(8) Cr.P.C.. The counsel relies on the decision in **Shaji** v. **State of Kerala** (2003 (2 KLT 929) in support of her contention that where the interests of justice so demand the power under Section 173(8) Cr.P.C. can be directed to be exercised by the police by the Court on its own motion or at the motion of the accused, complainant or the Investigator. There can be no doubt surviving on that question of law after the decision of the Division Bench referred above.

4. The only question that remains then is whether the interests of justice demand such a course. I have no hesitation to agree that in the facts

and circumstances which are revealed before Court that such a direction for further investigation must have been issued in the interests of justice.

5. This Crl.M.C. is accordingly allowed. Further investigation under Section 173(8) Cr.P.C. shall be conducted and relevant further report made to Court by the Investigating Officer/his successor under Section 173(8) Cr.P.C on the precise aspect as to the nature of injury suffered by the second petitioner.

6. A copy of the order shall be handed over to the Prosecutor, who shall forthwith communicate the same to the Investigating Officer. Such report after further investigation shall be filed before 28.2.2007 before the learned Magistrate.

(R. BASANT)
Judge

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